

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UGOCHUKWU L. ONEBUNNE,

Petitioner,

v.

WARDEN, F.C.I. MENDOTA,

Respondent.

No. 1:25-cv-00103-KES-SKO (HC)

**FINDINGS AND RECOMMENDATION  
TO DISMISS PETITION FOR WRIT OF  
HABEAS CORPUS**

**[TWENTY-ONE DAY DEADLINE]**

Petitioner is a federal prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On January 24, 2025, Petitioner filed the instant petition in this Court. He is in the custody of the Bureau of Prisons (“BOP”) at FCI-Mendota. He challenges the computation of his federal sentence by the BOP. He claims the BOP wrongfully found him ineligible to receive earned time credits under the First Step Act. The petition is unexhausted. In addition, review of immigration case information shows Petitioner’s claims are facially without merit. Therefore, the Court will recommend the petition be DISMISSED with prejudice.

**DISCUSSION**

**I. Exhaustion**

Before filing a petition for writ of habeas corpus, a federal prisoner challenging any circumstance of imprisonment must first exhaust all administrative remedies. Martinez v. Roberts, 804 F.2d 570, 571 (9th Cir. 1986); Chua Han Mow v. United States, 730 F.2d 1308,

1 1313 (9th Cir. 1984); Ruviwat v. Smith, 701 F.2d 844, 845 (9th Cir. 1983). The requirement that  
2 federal prisoners exhaust administrative remedies before filing a habeas corpus petition was  
3 judicially created; it is not a statutory requirement. Brown v. Rison, 895 F.2d 533, 535 (9th Cir.  
4 1990). Thus, “because exhaustion is not required by statute, it is not jurisdictional.” Id. If  
5 Petitioner has not properly exhausted his claims, the district court, in its discretion, may either  
6 “excuse the faulty exhaustion and reach the merits or require the petitioner to exhaust his  
7 administrative remedies before proceeding in court.”

8 The first step in seeking administrative remedies is a request for informal resolution. 28  
9 C.F.R. § 542.13. When informal resolution procedures fail to achieve sufficient results, the BOP  
10 makes available to inmates a formal three-level administrative remedy process: (1) a Request for  
11 Administrative Remedy (“BP-9”) filed at the institution where the inmate is incarcerated; (2) a  
12 Regional Administrative Remedy Appeal (“BP-10”) filed at the Regional Office for the  
13 geographic region in which the inmate’s institution is located; and (3) a Central Office  
14 Administrative Remedy Appeal (“BP-11”) filed with the Office of General Counsel. 28 C.F.R. §  
15 542.10 et seq.

16 Petitioner concedes that he has not administratively exhausted his claims, but he claims  
17 exhaustion should be waived for futility because he is challenging an established BOP policy.  
18 Petitioner states he has earned time credits under the First Step Act which entitle him to  
19 immediate release, but the BOP refuses to apply them because of an unlawful policy of excluding  
20 inmates with a detainer. (Doc. 1 at 6.) He notes an immigration detainer has been lodged against  
21 him indicating he is subject to a final order of removal.

22 Prior to November 18, 2022, the BOP took the position that inmates with detainees were  
23 ineligible for FSA credits. However, on November 18, 2022, the BOP issued Program Statement  
24 5410.01 modifying BOP procedures to allow inmates with detainees to earn FSA credits; the  
25 inmates still could not have those credits applied until the detainees were resolved. U.S. Dep’t of  
26 Justice, Federal Bureau of Prisons, Program Statement No. 5410.01, First Step Act of 2018 -  
27 Time Credits: Procedures for Implementation of 18 U.S.C. 3632(d)(4), at 17 (Nov. 18, 2022). On  
28 February 6, 2023, the BOP issued a change notice to the program statement in which the BOP

1 deleted the requirement that inmates have no detainers in order to have FSA credits applied to  
2 their sentence. U.S. Dep't of Justice, Federal Bureau of Prisons, Change Notice to Program  
3 Statement No. 5410.01, First Step Act of 2018 - Time Credits: Procedures for Implementation of  
4 18 U.S.C. 3632(d)(4) (Feb. 6, 2023). Thus, Petitioner is no longer barred pursuant to BOP policy  
5 from earning FSA credits and having them applied to his sentence solely due to a detainer.

6 Petitioner claims he is not subject to a Final Order of Removal, only an immigration  
7 detainer. However, the immigration detainer attached to his petition indicates a Final Order of  
8 Removal has in fact been charged against him. (Doc. 1 at 19, 21-22.) Moreover, a summary  
9 glance at the automated case information maintained by the Executive Office of Immigration  
10 Review (“EOIR”) utilizing Petitioner’s A-number shows Petitioner has misrepresented the facts.  
11 According to the case summary, Petitioner was ordered removed by an immigration judge on  
12 October 18, 2021. See <https://acis.eoir.justice.gov/en/caseInformation> (utilizing Petitioner’s A-  
13 number) (last visited February 14, 2025)<sup>1</sup>.

14 Petitioner claims exhaustion should be waived for futility because he is challenging an  
15 established BOP policy. This is incorrect. As noted above, the BOP no longer disallows inmates  
16 with detainers from earning and applying FSA credits. The BOP does disallow inmates with  
17 Final Orders of Removal from applying FSA credits, but this is in accordance with the governing  
18 statute. See 18 U.S.C. § 3632(d)(4)(E)(i) (A prisoner is ineligible to apply time credits under  
19 subparagraph (C) if the prisoner is the subject of a final order of removal).

20 To the extent Petitioner believes he is not subject to a Final Order of Removal, the issue  
21 should have been raised first to the BOP. Although the exhaustion requirement is subject to  
22 waiver in § 2241 cases “it is not lightly to be disregarded.” Murillo v. Mathews, 588 F.2d 759,  
23 762, n.8 (9th Cir. 1978) (citation omitted). A “key consideration” in exercising such discretion is  
24 whether “relaxation of the requirement would encourage the deliberate bypass of the  
25 administrative scheme[.]” Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) (internal

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26 <sup>1</sup> The Court may take judicial notice of facts that are capable of accurate and ready determination by resort  
27 to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); United States v. Bernal-  
28 Obeso, 989 F.2d 331, 333 (9th Cir. 1993). The Court hereby takes judicial notice of the case information  
in Petitioner’s immigration proceedings.

1 quotation marks omitted). Here, Petitioner has deliberately bypassed the administrative review  
2 process which should not be encouraged. Based on the noted immigration case information,  
3 Petitioner's claims are also meritless.

#### 4 RECOMMENDATION

5 For the foregoing reasons, the Court RECOMMENDS that the petition for writ of habeas  
6 corpus be DISMISSED with prejudice for failure to exhaust administrative remedies and for  
7 failure to state a claim.

8 This Findings and Recommendation is submitted to the United States District Court Judge  
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the  
10 Local Rules of Practice for the United States District Court, Eastern District of California. Within  
11 twenty-one (21) days after being served with a copy of this Findings and Recommendation, a  
12 party may file written objections with the Court and serve a copy on all parties. *Id.* The document  
13 should be captioned, "Objections to Magistrate Judge's Findings and Recommendation" and shall  
14 not exceed fifteen (15) pages, except by leave of court with good cause shown. The Court will not  
15 consider exhibits attached to the Objections. To the extent a party wishes to refer to any  
16 exhibit(s), the party should reference the exhibit in the record by its CM/ECF document and page  
17 number, when possible, or otherwise reference the exhibit with specificity. Any pages filed in  
18 excess of the fifteen (15) page limitation may be disregarded by the District Judge when  
19 reviewing these Findings and Recommendations pursuant to 28 U.S.C. § 636 (b)(1)(C). The  
20 parties are advised that failure to file objections within the specified time may result in the waiver  
21 of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014). This  
22 recommendation is not an order that is immediately appealable to the Ninth Circuit Court of  
23 Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure,  
24 should not be filed until entry of the District Court's judgment.

25 IT IS SO ORDERED.

26 Dated: **February 14, 2025**

27 */s/ Sheila K. Oberto*  
28 UNITED STATES MAGISTRATE JUDGE